

Senate Bill No. 413

Passed the Senate September 10, 1997

Secretary of the Senate

Passed the Assembly September 8, 1997

Chief Clerk of the Assembly

This bill was received by the Governor this ____ day
of _____, 1997, at ____ o'clock __M.

Private Secretary of the Governor

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CHAPTER ____

An act to add Section 1260 of the Health and Safety Code, relating to health, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 413, Peace. Health: nonprofit hospitals.

Existing law provides for the licensure of health facilities, including general acute care hospitals, by the State Department of Health Services, and makes the violation of its provisions subject to criminal sanction.

Existing law requires any nonprofit corporation that is subject to the public benefit corporation law and is a health facility, as defined, to obtain the written consent of the Attorney General prior to entering into certain agreements or transactions involving the health facility's assets.

This bill would prohibit any board member of a nonprofit corporation, that is subject to the requirement of obtaining the Attorney General's consent, who negotiates the terms and conditions of a sale or transfer of assets to a for-profit corporation or entity or a mutual benefit corporation from receiving any salary, compensation, payment, or other form of financial remuneration from the for-profit corporation or entity or the mutual benefit corporation. The bill would exempt from this prohibition any reimbursement or payment made to a member of the board of directors, who is a physician or other health care provider, for the provision of direct patient care services to patients, provided that prescribed conditions are satisfied. By creating a new requirement in the provisions governing health facilities, this bill would change the definition of a crime, thereby imposing a state-mandated local program.

The bill would authorize, after 2 years following the close of the sale or other transfer of assets, a person who was a member of the board of directors of the nonprofit corporation who is prohibited from receiving any



remuneration from the for-profit corporation or entity or mutual benefit corporation to enter into usual and customary business transactions with that for-profit corporation or entity or mutual benefit corporation if prescribed conditions are met. The bill would also authorize any person who is a member of management of the nonprofit corporation and who presents information or opinions to the board regarding the sale or transfer of assets that are relied upon, or considered by, any of the board members in making decisions regarding the sale or transfer, to make a written affirmative declaration that he or she will not work for or receive any form of remuneration from the for-profit corporation or entity or the mutual benefit corporation in the future. In making any decision regarding the sale or transfer of assets it would prohibit the board from substantially relying on any information presented by any person who does not make this written affirmative declaration.

The bill would exempt from this prohibition any person whose only role in the transfer or sale is to provide exclusively factual data, as described, to the nonprofit corporation.

The bill would also authorize the board of directors to contract with certain independent professionals to review and evaluate information and advice presented by an employee regarding a proposed sale or transfer, and would require that any director who substantially relies on any information and advice provided by such an independent professional be deemed to have not violated the provision prohibiting the board from relying on any information presented by any person who is authorized to make a written affirmative declaration that he or she will not work for the for-profit corporation or the mutual benefit corporation in the future and has not made this declaration.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.



This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 1260 is added to the Health and Safety Code, to read:

1260. (a) Except as provided in subdivision (b), any member of the board of directors of a nonprofit corporation that is subject to Section 5914 of the Corporations Code, who negotiates the terms and conditions of a sale or transfer of assets, as described in Section 5914 of the Corporations Code, is prohibited from receiving, directly or indirectly, any salary, compensation, payment, or other form of remuneration from the for-profit corporation or entity or mutual benefit corporation following the close of the sale or other transfer of assets. This prohibition shall not apply to any reimbursement or payment made to a member of the board of directors, who is a physician or other health care provider, for direct patient care services provided to patients covered by a health insurer, health care service plan, employer, or other entity that provides health care coverage, and that is owned, operated, or affiliated with the purchasing for-profit corporation or entity, provided that the amounts payable for the services rendered are no greater than the amounts payable to other physicians or health care providers providing the same or similar services.

For the purpose of this section, “direct patient care services” mean health care services provided directly to a patient, and do not include services provided through an intermediary. Further, in order to qualify for the exemption in this subdivision, the direct patient care services must be health care services that are regularly provided by other physicians or other health care providers in the community who are also receiving reimbursements or payments from the same health



insurer, health care service plan, employer, or other entity that is owned or operated by, or affiliated with, the purchasing for-profit corporation or entity.

(b) After a period of two years following the close of the sale or other transfer of assets, a person who was a member of the board of directors of the nonprofit corporation who is prohibited from receiving any remuneration from the for-profit corporation or entity or mutual benefit corporation under subdivision (a) may enter into usual and customary business transactions with the for-profit corporation or entity or mutual benefit corporation so long as the following facts are established:

(1) Prior to authorizing or approving the transaction, the representative of the for-profit corporation or entity or mutual benefit corporation considered and in good faith determined after reasonable investigation under the circumstances that the corporation could not have obtained a more advantageous arrangement with reasonable effort under the circumstances.

(2) The for-profit corporation or entity or mutual benefit corporation, in fact could not have obtained a more advantageous arrangement with reasonable effort under the circumstances.

(c) Any person who is a member of management of the nonprofit corporation and who presents information or opinions to the board regarding the sale or other transfer of assets as described in subdivision (a) that are relied upon, or considered by, any of the board members in making decisions regarding the sale or transfer, may make a written affirmative declaration that he or she will not work for, or receive any form of remuneration from, the for-profit corporation or entity or the mutual benefit corporation in the future.

(d) In making any decision regarding the sale or other transfer of the nonprofit corporation's assets, as described in Section 5914 of the Corporations Code, the board of the nonprofit corporation is prohibited from substantially relying on any information presented by any person to whom subdivision (c) applies who has not made a written affirmative declaration pursuant to subdivision (c). This



subdivision shall not apply to any person whose only role in the sale or transfer is to provide to the nonprofit corporation exclusively factual information about the nonprofit corporation, community, financial status, or other similar data.

(e) In performing those duties of a director set forth in subdivision (d), the board of directors may contract with independent counsel, accountants, financial analysts, or other professionals whom the board believes to be reliable and competent in the matters presented, to review and evaluate information and advice presented by an employee who has not signed an affirmative declaration pursuant to subdivision (c). Any director who substantially relies on information and advice presented by such an independent professional shall be deemed to have not violated subdivision (d).

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

Due to the high number of sales of nonprofit hospitals that are currently pending and expected to take place in California, it is necessary that this act take effect immediately in order to ensure the protection of the community's financial interest in the assets of the



nonprofit hospital and the community's interest in maintaining access to quality hospital care.



Approved _____, 1997

Governor

